



ITEM NO. 2

## STAFF REPORT

DATE: SEPTEMBER 20, 2011

TO: MAYOR AND CITY COUNCIL MEMBERS  
AGENCY CHAIR AND BOARD MEMBERS

FROM: ROD FOSTER, CITY MANAGER/EXECUTIVE DIRECTOR

PREPARED BY: ARTHUR W. MORGAN, REDEVELOPMENT MANAGER

SUBJECT: ADOPTION OF CITY AND AGENCY RESOLUTIONS  
CONDITIONALLY APPROVING A COMMUNITY REMITTANCE  
FUNDING AGREEMENT BY AND BETWEEN THE CITY AND THE  
AGENCY

A blue ink signature, likely of Rod Foster, the City Manager/Executive Director.

ADOPTION OF A RESOLUTION OF THE AGENCY  
CONDITIONALLY REDUCING THE FISCAL YEAR 2011-2012  
ALLOCATION TO THE LOW AND MODERATE INCOME HOUSING  
FUND AND MAKING RELATED FINDINGS

### RECOMMENDED ACTION

It is recommended that the City Council adopt Resolution No. R-86-11 conditionally approving a community remittance funding agreement by and between the City of Colton ("City") and the Redevelopment Agency for the City of Colton ("Agency") providing for the Agency's transfer of tax increment revenue to the City in an amount not to exceed the amount of the community remittance required under AB 1X 27 each year.

It is also recommended that the Agency Board adopt Resolution No. 895 conditionally approving a community remittance funding agreement by and between the City and the Agency providing for the Agency's transfer of tax increment revenue to the City in an amount not to exceed the amount of the community remittance required under AB 1X 27 each year.

It is recommended that the Agency Board adopt Resolution No. 896 conditionally reducing the Fiscal Year 2011-2012 allocation to the Low and Moderate Income Housing Fund and making related findings.

### GOAL STATEMENT

The proposed actions will allow the City and the Agency to enter into an agreement for the Agency to fund the City's payment of the Community Remittance in order for the Agency to continue to exist and operate and for the Agency to reduce its yearly allocation to its Low and Moderate Income Housing Fund for Fiscal Year 2011-2012 in order to fund the Community Remittance and other activities for that fiscal year.

## BACKGROUND

On June 28, 2011, as part of the 2011-2012 State of California budget bill, companion bills Assembly Bill 1X 26 ("AB 26") and Assembly Bill 1X 27 ("AB 27") were enacted. AB 26 would dissolve the Agency, unless the City adopts an ordinance to participate in the "Alternative Voluntary Redevelopment Program" established by AB 27. Participation in the Alternative Voluntary Redevelopment Program requires the City to pay certain dollar amounts annually, based on formulas set forth in California Health and Safety Code Section 34194 ("Community Remittance"), to the County of San Bernardino Auditor-Controller. For Fiscal Year 2011-2012 the State of California Director of Finance notified the City that the dollar amount of the Community Remittance payable by the City to participate in the Alternative Voluntary Redevelopment Program for Fiscal Year 2011-2012 is Three Million Two Hundred Forty Thousand Nine Dollars (\$3,240,009).

On July 18, 2011, a Petition for Writ of Mandate was filed in the Supreme Court of the State of California in the matter of *California Redevelopment Association, et al. v. Ana Matosantos, et al.*, Case No. 5194861 ("Legal Action"), challenging the constitutionality of AB 26 and AB 27 on behalf of cities, counties and redevelopment agencies and requesting a stay of enforcement of AB 26 and AB 27, pending the Supreme Court's determination of the legality of AB 26 and AB 27. On August 11, 2011, the Supreme Court issued an order in the Legal Action granting a partial stay of AB 26, exclusive of Health and Safety Code Sections 34161 through 34167 (which prohibit new redevelopment activity), and a complete stay of AB 27, such that the Agency cannot currently pursue new redevelopment activity (collectively, "Stay"). On August 17, 2011, the Supreme Court modified the Stay such that Health and Safety Code Sections 34167.5 through 34169.5, in addition to Health and Safety Code Sections 34161 through 34167, and Health and Safety Code Section 34194(b)(2) became effective again.

If upheld by the Supreme Court, the Alternative Voluntary Redevelopment Program under AB 27 would allow the Agency to continue pursuing redevelopment within the City, rather than being dissolved pursuant to AB 26. On August 2, 2011, the City conditionally elected to participate in the Alternative Voluntary Redevelopment Program by adoption of Ordinance No. O-03-11 ("Ordinance"), stating the City's election to participate in the program, if the Agency new redevelopment prohibitions, dissolution and Alternative Voluntary Redevelopment Program provisions of AB 26 and AB 27 are found to be constitutional.

## ISSUES/ANALYSIS

Health and Safety Code Section 34194.2, which is currently not effective as a result of the Stay, provides that the City may enter into an agreement with the Agency, whereby the Agency will transfer to the City a portion of the ad valorem property tax revenues allocated and paid by the County of San Bernardino to the Agency in each fiscal year, beginning with Fiscal Year 2011-2012, pursuant to the redevelopment plans for each of the Agency's Project Areas and Health and Safety Code Section 33670 ("Tax Increment"), in an amount not to exceed the amount of the

Community Remittance for such fiscal year, for the purpose of financing activities within the Project Areas related to the Agency's goals ("Agreement").

If AB 26 and AB 27 were found to be constitutional, and the City chose to enter into the Agreement with the Agency for the Agency to fund the Community Remittance beginning with Fiscal Year 2011-2012, the Agency's use of Tax Increment for that purpose would be an obligation of the Agency for the 2011-2012 Fiscal Year that should appear as an indebtedness on the Agency's Statement of Indebtedness ("SOI") for Fiscal Year 2011-2012, that must be filed on or before October 1, 2011. Under AB 27, any debt not appearing on an Agency SOI as of October 1, 2011 will require the Agency to make an additional pass-through payment to school entities. The City's Community Remittance payment amount to be funded by the Agency may be considered such "new debt", if the Agreement is not approved and listed on the Agency's SOI filed on or before October 1, 2011.

Therefore, it is recommended that the City and the Agency enter into the Agreement on the condition that the Supreme Court orders the Stay lifted or modified in a manner that permits the Agency and the City to enter into this Agreement. In light of the Legal Action and the Stay, the Agreement provides that the Agency's obligation to transfer tax increment revenues to the City and the City's payment of the Community Remittance is conditioned upon: (1) a final determination that California Health and Safety Code Sections 34161 et seq. and 34192 et seq. are constitutional; and (2) the City's Ordinance electing to participate in the Alternative Voluntary Redevelopment Program being valid and effective for such purpose, or later ratification or re-adoption of such Ordinance by the City or adoption of a new Ordinance by the City and, in each case, such action is effective to allow the City and the Agency to proceed pursuant to the Alternative Voluntary Redevelopment Program.

Health and Safety Code Sections 33334.2 and 33334.3 require the Agency to deposit twenty percent (20%) of Tax Increment into a Low and Moderate Income Housing Fund ("Housing Fund") for the purpose of increasing, improving, and preserving the community's supply of low and moderate income housing. In order to assist the Agency in funding the amount of the Community Remittance for Fiscal Year 2011-2012 only, Health and Safety Code Section 34194.3, which is currently not effective as a result of the Stay, provides that the Agency shall be exempt from making the full allocation required to be made to the Housing Fund, if the Agency finds that there are insufficient other moneys to meet the Agency's debt and other obligations, current priority program needs, or the Agency's obligations under the Agreement.

It is recommended that the Agency make this finding because if the Agency cannot use the 2011-12 Housing Fund allocation pursuant to Health and Safety Code Section 34194.3, it will not be able to meet its obligation to the City regarding the Community Remittance for Fiscal Year 2011-2012, as well as continue to meet its debt and other obligations and other priority needs, including basic administration costs based on projected revenues in 2011-12. However, because the Stay prohibits the effectiveness of Health and Safety Code Section 34194.3, and the finding and the exemption from making the full allocation to the Housing Fund as provided for in the aforementioned code section, the amount of the reduction in the Agency's allocation of Tax

Increment to the Housing Fund in the 2011-2012 Fiscal Year ("Housing Allocation Reduction") shall be determined by the Executive Director following: (1) resolution of the Agency's appeal of the Community Remittance amount for the 2011-2012 Fiscal Year; (2) the Supreme Court ordering the Stay be lifted or modified in a manner that permits the Agency to enter into the Agreement; (3) a final determination by the California Supreme Court that California Health and Safety Code Section 34161 et seq. and California Health and Safety Code Section 34192 et seq. are constitutional; and (4) determination that the City's Ordinance electing to participate in the Alternative Voluntary Redevelopment Program is valid and effective for such purpose, or the City's later ratification or re-adoption of such ordinance or City adoption of a new ordinance and, in each case, where such City action is effective to allow the City and the Agency to proceed pursuant to the Alternative Voluntary Redevelopment Program.

## **FISCAL IMPACTS**

The Fiscal Year 2011-12 Community Remittance to be paid by the City is \$3,240,009, as determined by the State Director of Finance. This is the initial amount that the Agency will have to pay to the City under the Agreement, if the conditions to effectiveness of the Agreement and for payment under the Agreement are met. Pending resolution of the Agency's appeal regarding the Community Remittance amount, the Agency's Executive Director will also have the authority to reduce its allocation of Tax Increment to its Housing Fund for Fiscal Year 2011-2012 up to the estimated required total Housing Fund deposit amount of \$1,945,460 in order to fund the Agency's obligation to the City regarding the Community Remittance for Fiscal Year 2011-2012 and continue to meet the Agency's debt and other obligations and current priority program needs, if the conditions precedent to the Agency's obligations under the Agreement occur.

## **ALTERNATIVES**

The City Council and Agency Board may wish to consider the following alternatives:

1. Provide alternative direction to staff.

## **ATTACHMENTS**

- (1) City Council Resolution No. R-86-11
- (2) Agency Resolution No. 895
- (3) Community Remittance Funding Agreement
- (4) Agency Resolution No. 896 (Housing Fund allocation reduction)

## **RESOLUTION NO. R-86-11**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLTON CONDITIONALLY APPROVING A COMMUNITY REMITTANCE FUNDING AGREEMENT WITH THE REDEVELOPMENT AGENCY FOR THE CITY OF COLTON**

**WHEREAS**, the City Council of the City of Colton ("City") currently has five effective redevelopment projects: (1) the Cooley Ranch Redevelopment Project (adopting Ordinance No. 1478, dated July 29, 1975); (2) the Santa Ana River Redevelopment Project (adopting Ordinance No. 1632, dated December 29, 1982); (3) the West Valley Redevelopment Project (adopting Ordinance No. O-10-86, dated July 15, 1986 and its amendment adopting Ordinance No. O-9-87, dated June 30, 1987); (4) the Mt. Vernon Corridor Redevelopment Project (adopting Ordinance No. O-8-87, dated June 30, 1987); and (5) the Rancho/Mill Redevelopment Project (adopting Ordinance No. O-13-94, dated July 5, 1994) (collectively and as amended, the "Project Areas"); and

**WHEREAS**, the Redevelopment Agency for the City of Colton ("Agency") has been engaged in activities to redevelop the Project Areas pursuant to the provisions of the California Community Redevelopment Law (Health and Safety Code Section 33000 et seq.); and

**WHEREAS**, continued redevelopment of the Project Areas to eliminate blight, improve public facilities and infrastructure, renovate and construct affordable housing, and enter into partnerships with private industries to create jobs and expand the local economy is vital to the health, safety and welfare of the City; and

**WHEREAS**, on June 28, 2011, the State of California enacted California Health and Safety Code Section 34161 et seq. as part of the State's enactment of Assembly Bill 1X 26 ("AB 1X 26"), immediately prohibiting further redevelopment activity by redevelopment agencies and dissolving all redevelopment agencies in the State of California on October 1, 2011; and

**WHEREAS**, on June 28, 2011, the State of California also enacted California Health and Safety Code Section 34192 et seq. under Assembly Bill 1X 27 ("AB 1X 27"), providing communities the opportunity to continue redevelopment activity through their local redevelopment agencies by electing to participate in the "Alternative Voluntary Redevelopment Program"; and

**WHEREAS**, on July 18, 2011, a Petition for Writ of Mandate was filed in the Supreme Court of the State of California in the matter of *California Redevelopment Association, et al. v. Ana Matosantos, et al.*, Case No. 5194861 ("Legal Action"), challenging the constitutionality of AB 1X 26 and AB 1X 27, on behalf of cities, counties and redevelopment agencies and requesting a stay of enforcement of AB 1X 26 and AB 1X 27, pending the Supreme Court's determination of the constitutionality of AB 1X 26 and AB 1X 27; and

**WHEREAS**, on August 11, 2011, the Supreme Court issued an order in the Legal Action granting a partial stay of California Health and Safety Code Section 34161 et seq., exclusive of California Health and Safety Code Sections 34161 through 34167 (which prohibit



all new redevelopment activity), and a complete stay of California Health and Safety Code Section 34192 et seq., such that the City and the Agency cannot currently pursue new redevelopment activity under the Alternative Voluntary Redevelopment Program (collectively, "Stay"); and

**WHEREAS**, on August 17, 2011, the Supreme Court modified the Stay such that the Stay no longer affects California Health and Safety Code Sections 34167.5 through 34169.5, in addition to California Health and Safety Code Sections 34161 through 34167, or California Health and Safety Code Section 34194(b)(2); and

**WHEREAS**, if upheld by the Supreme Court, the Alternative Voluntary Redevelopment Program would allow the Agency to continue pursuing redevelopment within the City, rather than being dissolved pursuant to California Health and Safety Code Section 34161 et seq.; and

**WHEREAS**, on August 2, 2011, the City conditionally elected to participate in the Alternative Voluntary Redevelopment Program by adoption of Ordinance No. O-03-11 ("Ordinance"), stating the City's election to participate in the program, if California Health and Safety Code Section 34161 et seq., and California Health and Safety Code Section 34192 et seq., are found to be constitutional; and

**WHEREAS**, the City intends to participate in the Alternative Voluntary Redevelopment Program under the provisions of California Health and Safety Code Section 34161 et seq., and California Health and Safety Code Section 34192 et seq., as they existed prior to imposition of the Stay, because such laws prohibit all new redevelopment activity within the City, would dissolve the Agency and threaten the future health, safety and welfare of the City; and

**WHEREAS**, the City does not intend to participate in the Alternative Voluntary Redevelopment Program, if all or any portion of California Health and Safety Code Section 34161 et seq., or California Health and Safety Code Section 34192 et seq., are determined by a court of competent jurisdiction to be unconstitutional, illegal, invalid or otherwise unenforceable or inapplicable, for any reason or in any manner that allows the Agency to continue its operations and redevelopment activities in a manner acceptable to the City Council, without the City's participation in the Alternative Voluntary Redevelopment Program, and all appeals of such court determination are exhausted or unsuccessful, or the time for filing an appeal of such court determination has lapsed; and

**WHEREAS**, participation in the Alternative Voluntary Redevelopment Program requires the City to pay certain dollar amounts annually, based on formulas set forth in California Health and Safety Code Section 34194 ("Community Remittance"), to the County of San Bernardino Auditor-Controller; and

**WHEREAS**, for Fiscal Year 2011-2012 the State of California Director of Finance was required to notify the City by August 1, 2011, of the dollar amount of the Community Remittance payable by the City to participate in the Alternative Voluntary Redevelopment Program for such fiscal year; and

**WHEREAS**, the State of California Director of Finance notified the City, as of August 1, 2011, that the dollar amount of the Community Remittance payable by the City to participate in the Alternative Voluntary Redevelopment Program for Fiscal Year 2011-2012 is Three Million Two Hundred Forty Thousand Nine Dollars (\$3,240,009); and

**WHEREAS**, the City has timely filed an appeal of the Community Remittance payment amount for Fiscal Year 2011-2012 with the State of California Director of Finance; and

**WHEREAS**, California Health and Safety Code Section 34194.2, which is currently not effective as a result of the Stay, provides that the City may enter into an agreement with the Agency, whereby the Agency will transfer to the City a portion of the ad valorem property tax revenues allocated and paid by the County of San Bernardino to the Agency in each fiscal year, beginning with the 2011-2012 fiscal year, pursuant to the redevelopment plans for each of the Project Areas and Health and Safety Code Section 33670 ("Tax Increment"), in an amount not to exceed the amount of the Community Remittance for such fiscal year, for the purpose of financing activities within the Project Areas related to the Agency's goals ("Agreement"); and

**WHEREAS**, the City and the Agency desire to enter into the Agreement, with the effectiveness of the Agreement conditioned on the Supreme Court ordering the Stay lifted or modified in a manner that permits the Agency and the City to enter into the Agreement and the City's Ordinance electing to participate in the Alternative Voluntary Redevelopment Program is valid and effective for such purpose, or later ratification or re-adoption of such Ordinance by the City or adoption of a new Ordinance by the City, and in each case, such action is effective to allow the City and the Agency to proceed pursuant to the Alternative Voluntary Redevelopment Program.

**NOW, THEREFORE THE CITY COUNCIL OF THE CITY OF COLTON DOES HEREBY RESOLVE AND FIND AS FOLLOWS:**

**Section 1. Recitals.** The Recitals preceding this Resolution are true and correct and are incorporated into this Resolution.

**Section 2. CEQA.** Adoption of this Resolution is exempt from the requirements of the California Environmental Quality Act ("CEQA"), pursuant to State CEQA Guidelines (Title 14 California Code of Regulations Section 15000 et seq.) Section 15061(b)(3), because it can be seen with certainty that approval of the Agreement will not have a significant effect on the environment, and pursuant to State CEQA Guidelines Section 15378(b)(4), because approval of the Agreement is the creation of a government funding mechanism or other government fiscal activity which does not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment. The City Clerk is authorized and directed to file a Notice of Exemption with the appropriate official of the County of San Bernardino, California, within five (5) days following the date of adoption of this Resolution.

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**Section 3. Finding.** Upon consideration of the facts set forth in the staff report accompanying this Resolution and other written and oral evidence presented to the Agency, the City Council finds that the transfer of Tax Increment to the City for funding the Community Remittance payments by the City will: (1) allow the Agency to remain in existence and continue to act to accomplish the Agency's goals in the Project Areas and is in the best interests of the health, safety and welfare of the City's residents; and (2) free the City from committing general fund revenues or other City assets to pay the Community Remittance for any fiscal year.

**Section 4. Approval of Agreement.** The City Council conditionally approves the Agreement, in substantially the form attached to this Resolution as Exhibit A to only be effective upon the Stay being lifted or modified in a manner that permits the Agency and the City to enter into the Agreement and the City's Ordinance electing to participate in the Alternative Voluntary Redevelopment Program is valid and effective for such purpose, or later ratification or re-adoption of such Ordinance by the City or adoption of a new Ordinance by the City, and in each case, such action is effective to allow the City and the Agency to proceed pursuant to the Alternative Voluntary Redevelopment Program. The Agreement provides that the Agency's obligation to transfer Tax Increment to the City and the City's obligation to pay the Community Remittance are expressly conditioned upon: (1) a final determination that California Health and Safety Code Sections 34161 et seq. and 34192 et seq. are constitutional; and (2) the City's Ordinance electing to participate in the Alternative Voluntary Redevelopment Program being valid and effective for such purpose, or later ratification or re-adoption of such Ordinance by the City or adoption of a new Ordinance by the City occurs, and in each case, such action is effective to allow the City and the Agency to proceed pursuant to the Alternative Voluntary Redevelopment Program. The City Council authorizes and directs the City Manager to sign and enter into the Agreement on behalf of the City, including making any minor clarifying, conforming and technical changes as may be approved by City Attorney. The City Manager is further authorized and directed to take such actions and make or enter into such documents as may be necessary to carry out the obligations of the City under the Agreement.

**Section 5. Severability.** If any provision of this Resolution or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The City Council declares that the City Council would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.

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**Section 6.**     **Certification.** The City Clerk shall certify to the adoption of this Resolution.

**Section 7.**     **Effective Date.** This Resolution shall become effective immediately upon its adoption.

**APPROVED AND ADOPTED** this 20<sup>th</sup> day of September, 2011.

AYES:

NAYS:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
Sarah S. Zamora, Mayor

ATTEST:

\_\_\_\_\_  
Eileen C. Gomez, City Clerk, CMC

STATE OF CALIFORNIA                    )  
COUNTY OF SAN BERNARDINO )       ss.  
CITY OF COLTON                        )

I, EILEEN C. GOMEZ, City Clerk of the City of Colton, do hereby certify that the foregoing Resolution No. R-86-11 was duly and regularly adopted by the City Council of the City of Colton at a regular meeting thereof on the 20<sup>th</sup> day of September, 2011 and that the same was passed and adopted by the following vote, to wit:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

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Eileen C. Gomez, City Clerk, CMC

**Exhibit A**

**Community Remittance Funding Agreement**

**[Attached behind this cover page]**

## COMMUNITY REMITTANCE FUNDING AGREEMENT

This COMMUNITY REMITTANCE FUNDING AGREEMENT (“**Agreement**”), is dated as of September 20, 2011, by and between the CITY OF COLTON, a California municipal corporation (“**City**”), and the REDEVELOPMENT AGENCY FOR THE CITY OF COLTON, a public body, corporate and politic (“**Agency**”). The City and the Agency are sometimes, individually, referred to in this Agreement as a “**Party**” or are sometimes, collectively, referred to in this Agreement as the “**Parties**.” The Parties enter into this Agreement with reference to the following recited facts:

### RECITALS

A. The City currently has five effective redevelopment projects: (1) the Cooley Ranch Redevelopment Project (adopting Ordinance No. 1478, dated July 29, 1975); (2) the Santa Ana River Redevelopment Project (adopting Ordinance No. 1632, dated December 29, 1982); (3) the West Valley Redevelopment Project (adopting Ordinance No. O-10-86, dated July 15, 1986 and its amendment adopting Ordinance No. O-9-87, dated June 30, 1987); (4) the Mt. Vernon Corridor Redevelopment Project (adopting Ordinance No. O-8-87, dated June 30, 1987); and (5) the Rancho/Mill Redevelopment Project (adopting Ordinance No. O-13-94, dated July 5, 1994) (collectively and as amended, the “**Project Areas**”); and

B. The Agency has been engaged in activities to redevelop the Project Areas pursuant to the provisions of the California Community Redevelopment Law (Health and Safety Code Sections 33000, et seq.); and

C. Continued redevelopment of the Project Areas to eliminate blight, improve public facilities and infrastructure, renovate and construct affordable housing, and enter into partnerships with private industries to create jobs and expand the local economy is vital to the health, safety and welfare of the City; and

D. On June 28, 2011, the State of California enacted California Health and Safety Code Section 34161 et seq. as part of the State’s enactment of Assembly Bill 1X 26 (“**AB 1X 26**”), immediately prohibiting further redevelopment activity by redevelopment agencies and dissolving all redevelopment agencies in the State of California on October 1, 2011; and

E. On June 28, 2011, the State of California also enacted California Health and Safety Code Section 34192 et seq. under Assembly Bill 1X 27 (“**AB 1X 27**”), providing communities the opportunity to continue redevelopment activity through their local redevelopment agencies by electing to participate in the “Alternative Voluntary Redevelopment Program”; and

F. On July 18, 2011, a Petition for Writ of Mandate was filed in the Supreme Court of the State of California in the matter of *California Redevelopment Association, et al. v. Ana Matosantos, et al.*, Case No. 5194861 (“**Legal Action**”), challenging the constitutionality of AB 1X 26 and AB 1X 27, on behalf of cities, counties and redevelopment agencies and requesting a stay of enforcement of AB 1X 26 and AB 1X 27, pending the Supreme Court’s determination of the constitutionality of AB 1X 26 and AB 1X 27; and

G. On August 11, 2011, the Supreme Court issued an order in the Legal Action granting a partial stay of California Health and Safety Code Section 34161 et seq., exclusive of California Health and Safety Code Sections 34161 through 34167 (which prohibit all new redevelopment activity), and a complete stay of California Health and Safety Code Section 34192 et seq., such that the City and the Agency cannot currently pursue new redevelopment activity under the Alternative Voluntary Redevelopment Program (collectively, “**Stay**”); and

H. On August 17, 2011, the Supreme Court modified the Stay such that the Stay no longer affects California Health and Safety Code Sections 34167.5 through 34169.5, in addition to California Health and Safety Code Sections 34161 through 34167, or California Health and Safety Code Section 34194(b)(2); and

I. If upheld by the Supreme Court, the Alternative Voluntary Redevelopment Program would allow the Agency to continue pursuing redevelopment within the City, rather than being dissolved pursuant to California Health and Safety Code Section 34161 et seq.; and

J. On August 2, 2011, the City conditionally elected to participate in the Alternative Voluntary Redevelopment Program by adoption of Ordinance No. O-03-11 (“**Ordinance**”), stating the City’s election to participate in the program, if California Health and Safety Code Section 34161 et seq., and California Health and Safety Code Section 34192 et seq., are found to be constitutional; and

K. The City intends to participate in the Alternative Voluntary Redevelopment Program under the provisions of California Health and Safety Code Section 34161 et seq., and California Health and Safety Code Section 34192 et seq., as they existed prior to imposition of the Stay, because such laws prohibit all new redevelopment activity within the City, would dissolve the Agency and threaten the future health, safety and welfare of the City; and

L. The City does not intend to participate in the Alternative Voluntary Redevelopment Program, if all or any portion of California Health and Safety Code Section 34161 et seq., or California Health and Safety Code Section 34192 et seq., are determined by a court of competent jurisdiction to be unconstitutional, illegal, invalid or otherwise unenforceable or inapplicable, for any reason or in any manner that allows the Agency to continue its operations and redevelopment activities in a manner acceptable to the City Council, without the City’s participation in the Alternative Voluntary Redevelopment Program, and all appeals of such court determination are exhausted or unsuccessful, or the time for filing an appeal of such court determination has lapsed; and

M. Participation in the Alternative Voluntary Redevelopment Program requires the City to pay certain dollar amounts annually, based on formulas set forth in California Health and Safety Code Section 34194 (“**Community Remittance**”), to the County of San Bernardino Auditor-Controller; and

N. For Fiscal Year 2011-2012 the State of California Director of Finance was required to notify the City by August 1, 2011, of the dollar amount of the Community Remittance payable by the City to participate in the Alternative Voluntary Redevelopment Program for such fiscal year; and

O. The State of California Director of Finance notified the City, as of August 1, 2011, that the dollar amount of the Community Remittance payable by the City to participate in the Alternative Voluntary Redevelopment Program for Fiscal Year 2011-2012 is Three Million Two Hundred Forty Thousand Nine Dollars (\$3,240,009); and

P. The City has timely filed an appeal of the Community Remittance payment amount for Fiscal Year 2011-2012 with the State of California Director of Finance; and

Q. California Health and Safety Code Section 34194.2, which is currently not effective as a result of the Stay, provides that the City may enter into an agreement with the Agency, whereby the Agency will transfer to the City a portion of the ad valorem property tax revenues allocated and paid by the County of San Bernardino (“**County**”) to the Agency in each fiscal year, beginning with the 2011-2012 fiscal year, pursuant to the redevelopment plans for each of the Project Areas and Health and Safety Code Section 33670 (“**Tax Increment**”), in an amount not to exceed the amount of the Community Remittance for such fiscal year, for the purpose of financing activities within the Project Areas related to the Agency’s goals; and

R. The City and the Agency desire to enter into this Agreement, with the effectiveness of this Agreement conditioned on the Supreme Court ordering the Stay lifted or modified in a manner that permits the Agency and the City to enter into this Agreement; and

S. The City reserves the right, whether or not any Community Remittance has been paid, to challenge the legality of California Health and Safety Code Section 34161 et seq., and/or California Health and Safety Code Section 34192 et seq.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the promises of the City and the Agency contained in this Agreement and other good and valuable consideration, the City and the Agency agree as follows:

1. Conditions to Effectiveness of Agreement. This Agreement shall only become effective if and when the Supreme Court orders the Stay lifted or modified in a manner that permits the Agency and the City to enter into this Agreement and the City’s ordinance electing to participate in the Alternative Voluntary Redevelopment Program is valid and effective for such purpose or later ratification or re-adoption of such ordinance by the City or adoption of a new ordinance by the City and, in each case, such action is effective to allow the City and the Agency to proceed pursuant to the Alternative Voluntary Redevelopment Program.



2. Agency Payments to City to Fund Community Remittance Each Fiscal Year. The Agency's obligation to make payments to the City pursuant to this Agreement is expressly conditioned upon ("**Condition**"): (1) a final determination by the California Supreme Court that California Health and Safety Code Section 34161 et seq., and California Health and Safety Code Section 34192 et seq., are constitutional; and (2) the City's ordinance electing to participate in the Alternative Voluntary Redevelopment Program is valid and effective for such purpose or the City's later ratification or re-adoption of such ordinance or City adoption of a new ordinance and, in each case, such City action is effective to allow the City and the Agency to proceed pursuant to the Alternative Voluntary Redevelopment Program. Subject to the prior occurrence of the Condition, on or before each January 10 and May 10 of each fiscal year while this Agreement is in effect, the Agency shall pay to the City an amount of Tax Increment or other Agency funds equal to one-half of the amount of the Community Remittance for such fiscal year; provided, however, that for the 2011-2012 fiscal year the Agency shall pay to the City an amount of Tax Increment or other Agency funds equal to the amount of the Community Remittance for such fiscal year in a time and manner that will allow the City to pay the Community Remittance to the County for the 2011-2012 fiscal year, within the time required by law. The amount of the Community Remittance for each fiscal year shall be determined pursuant to California Health and Safety Code Section 34194. The City and the Agency agree that, if the Agency does not have sufficient Tax Increment available to pay the full Community Remittance in any fiscal year, the City shall have no obligation to use City funds for such purpose, in which case the Agency may be dissolved pursuant to California Health and Safety Code Section 34195.

3. City Payment of Community Remittance Each Fiscal Year. The City's obligation to make payments of Community Remittances pursuant to this Section 3 is expressly conditioned upon the prior occurrence of the Condition. Subject to the prior occurrence of the Condition and receipt of Tax Increment or other funds from the Agency in an amount equal to the amount of the Community Remittance pursuant to Section 2, the City shall pay to the County of San Bernardino Auditor-Controller, no later than January 15 and May 15 of each year, one-half of the amount of the Community Remittance due for such fiscal year while this Agreement is in effect; provided, however, that for the 2011-2012 fiscal year the City shall pay the Community Remittance for the 2011-2012 fiscal year, within the time required by law. The City's obligation to pay such Community Remittances shall be a special limited fund obligation of the City payable solely from Tax Increment or other funds paid to the City by the Agency pursuant to this Agreement for the purpose of paying the Community Remittance in a particular fiscal year. Nothing contained in this Agreement is intended to nor shall be deemed to be a pledge of the City's general fund revenues or other City assets to payment of the Community Remittance for any fiscal year.

4. Termination. This Agreement may be terminated by either the City or the Agency, if all or any portion of California Health and Safety Code Section 34161 et seq., or California Health and Safety Code Section 34192 et seq., are determined by a court of competent jurisdiction to be unconstitutional, illegal, invalid or otherwise unenforceable or inapplicable, for any reason or in any manner. Notwithstanding the foregoing or any other provision of this Agreement, either the City or the Agency may terminate this Agreement at any time, for any reason or no reason.

5. Remedies.

5.1 **Remedies.** City and Agency shall have all remedies available to either of them at law or in equity under the laws of the State of California regarding any Event of Default by the other under this Agreement, subject to Section 5.3.

5.2 **Rights and Remedies are Cumulative.** Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties set forth in this Agreement are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by such Party, at the same or different times, of any other rights or remedies for the same Default or Event of Default or the same rights or remedies for any other Default or Event of Default.

5.3 **No Consequential Damages.** Whenever either Party may seek or claim damages against the other Party, neither Party shall seek, nor shall there be awarded or granted by any court, arbitrator, or other adjudicator, any speculative, consequential, collateral, special, punitive, or indirect damages, whether such breach shall be willful, knowing, intentional, deliberate, or otherwise. The Parties intend that any damages awarded to either Party shall be limited to actual, direct damages sustained by the aggrieved Party. Neither Party shall be liable for any loss of profits suffered or claimed to have been suffered by the other Party.

5.4 **Definitions.** For purposes of this Agreement, the following terms are defined as follows:

(a) *Default.* Any Monetary Default or Non-Monetary Default.

(b) *Event of Default.* The occurrence of any one or more of the following:

(i) Monetary Default. A Monetary Default that continues for thirty (30) days after Notice from the non-defaulting Party, specifying in reasonable detail the amount of money not paid and the nature and calculation of each such payment; or

(ii) Non-Monetary Default. Any Non-Monetary Default that is not cured within thirty (30) days after Notice to the Party alleged to be in Default describing the Non-Monetary Default in reasonable detail, or, in the case of a Non-Monetary Default that cannot with reasonable diligence be cured within thirty (30) days after such Notice, if the Party alleged to be in Default does not do all of the following: (i) within thirty (30) days after Notice of such Non-Monetary Default, advise the other Party of the intention of the Party alleged to be in Default to take all reasonable steps to cure such Non-Monetary Default; and (ii) duly commence such cure, within such period, and then prosecute such cure to completion within a reasonable time under the circumstances.

(c) *Monetary Default.* Any failure by either Party to pay or deposit, when and as this Agreement requires, any amount of money whether to or with a Party or a third person.

(d) *Non-Monetary Default.* The occurrence of any of the following, except to the extent constituting a Monetary Default: (a) any failure of a Party to perform any of its obligations under this Agreement; (b) a Party's failure to comply with any material restriction or

prohibition in this Agreement; or (c) any other event or circumstance that, with passage of time or giving of Notice, or both, or neither, would constitute a breach of this Agreement.

6. General Provisions.

6.1 **Incorporation of Recitals.** The Recitals of fact set forth preceding this Agreement are true and correct and are incorporated into this Agreement in their entirety by this reference.

6.2 **Notices, Demands and Communications Between the Parties.** Any and all notices submitted by either Party to the other Party pursuant to or as required by this Agreement shall be proper, if in writing and transmitted to the address of the City or the Agency, as applicable, set forth below in this Section 6.2, by one or more of the following methods: (1) messenger for immediate personal delivery; (2) a nationally recognized overnight (one business day) delivery service (i.e., Federal Express, United Parcel Service, etc.); or (3) registered or certified United States mail, postage prepaid, return receipt requested. Such notices may be sent in the same manner to such other addresses as either Party may designate, from time to time, by notice. Any notice shall be deemed to be received by the addressee, regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt, on the day that the notice is delivered by personal delivery, on the date of delivery by a nationally recognized overnight courier service (or when delivery has been attempted twice, as evidenced by the written report of the courier service) or four (4) calendar days after the notice is deposited with the United States Postal Service for delivery, as provided in this Section 6.2. Rejection, other refusal to accept or the inability to deliver a notice because of a changed address of which no notice was given or other action by a person to whom notice is sent, shall be deemed receipt of the notice. The following are the authorized addresses for the submission of notices to the Parties, as of the date of this Agreement:

To City: City of Colton  
650 N. La Cadena Drive  
Colton, CA 92324  
Attn: City Manager

To Agency: Redevelopment Agency for the  
City of Colton  
650 N. La Cadena Drive  
Colton, CA 92324  
Attn: Executive Director

6.3 **Relationship of Parties.** The Parties each intend and agree that the City and the Agency are independent contracting entities and do not intend by this Agreement to create any partnership, joint venture, or similar business arrangement, relationship or association between them.

6.4 **Survival of Agreement.** All of the provisions of this Agreement shall be applicable to any dispute between the Parties arising from this Agreement, whether prior to or following expiration or termination of this Agreement, until any such dispute is finally and

completely resolved between the Parties, either by final written settlement, entry of a non-appealable judgment or expiration of all applicable statutory limitations periods and all terms and conditions of this Agreement relating to dispute resolution and limitations on damages or remedies shall survive any expiration or termination of this Agreement.

**6.5 Calculation of Time Periods.** Unless otherwise specified, all references to time periods in this Agreement measured in days shall be to consecutive calendar days, all references to time periods in this Agreement measured in months shall be to consecutive calendar months and all references to time periods in this Agreement measured in years shall be to consecutive calendar years.

**6.6 Principles of Interpretation.** No inference in favor of or against any Party shall be drawn from the fact that such Party has drafted any part of this Agreement. The Parties have both participated substantially in the negotiation, drafting, and revision of this Agreement, with advice from legal and other counsel and advisers of their own selection. A word, term or phrase defined in the singular in this Agreement may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which shall govern all language in this Agreement. The words "include" and "including" in this Agreement shall be construed to be followed by the words: "without limitation." Each collective noun in this Agreement shall be interpreted as if followed by the words "(or any part of it)," except where the context clearly requires otherwise. Every reference to any document, including this Agreement, refers to such document, as modified from time to time (excepting any modification that violates this Agreement), and includes all exhibits, schedules, addenda and riders to such document. The word "or" in this Agreement includes the word "and." Every reference to a law, statute, regulation, order, form or similar governmental requirement refers to each such requirement as amended, modified, renumbered, superseded or succeeded, from time to time.

**6.7 Governing Law.** The substantive and procedural laws of the State of California shall govern the interpretation and enforcement of this Agreement, without application of conflicts or choice of laws principles.

**6.8 Binding on Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective legal representatives, successors and assigns.

**6.9 No Other Representations or Warranties.** Except as expressly set forth in this Agreement, no Party makes any representation or warranty material to this Agreement to any other Party.

**6.10 No Third-Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the Parties and their respective permitted successors and assigns, nor is anything in this Agreement intended to relieve or discharge any obligation of any third person to any Party or give any third person any right of subrogation or action over or against any Party.

6.11 **Signature in Counterparts.** This Agreement may be signed by the authorized representatives of the Parties in multiple counterpart originals, each of which shall be deemed to be an original, but all of which together shall constitute one and the same document.

6.12 **Entire Agreement.** This Agreement includes nine (9) pages that constitute the entire understanding and Agreement of the Parties regarding the subjects addressed in this Agreement. This Agreement integrates all of the terms and conditions mentioned in this Agreement or incidental to this Agreement, and supersedes all negotiations or previous agreements between the Parties with respect to the subjects addressed in this Agreement.

6.13 **Time Declared to be of the Essence.** As to the performance of any obligation under this Agreement of which time is a component, the performance of such obligation within the time specified is of the essence.

6.14 **No Implied or Continuing Waiver.** Failure to insist on any one occasion upon strict compliance with any term, covenant, condition, restriction or agreement contained in this Agreement shall not be deemed a waiver of such term, covenant, condition, restriction or agreement, nor shall any waiver or relinquishment of any rights or powers under this Agreement, at any one time or more times, be deemed a waiver or relinquishment of such right or power at any other time or times. All waivers of the provisions of this Agreement and all amendments to this Agreement must be in writing and signed by the authorized representative(s) of both the City and the Agency.

**[Signatures on the following page]**

**SIGNATURE PAGE  
TO  
COMMUNITY REMITTANCE FUNDING AGREEMENT**

**CITY OF COLTON,**  
a California municipal corporation

**REDEVELOPMENT AGENCY FOR THE  
CITY OF COLTON**  
a public body, corporate and politic

By: \_\_\_\_\_  
Rod Foster  
City Manager

By: \_\_\_\_\_  
Rod Foster  
Executive Director

ATTEST:

ATTEST:

By: \_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Agency Secretary

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Best Best & Krieger, LLP

Best Best & Krieger, LLP

By: \_\_\_\_\_  
City Attorney

By: \_\_\_\_\_  
Agency Counsel



## RESOLUTION NO. 895

### **A RESOLUTION OF THE REDEVELOPMENT AGENCY FOR THE CITY OF COLTON CONDITIONALLY APPROVING A COMMUNITY REMITTANCE FUNDING AGREEMENT WITH THE CITY OF COLTON**

**WHEREAS**, the City Council of the City of Colton ("City") currently has five effective redevelopment projects: (1) the Cooley Ranch Redevelopment Project (adopting Ordinance No. 1478, dated July 29, 1975); (2) the Santa Ana River Redevelopment Project (adopting Ordinance No. 1632, dated December 29, 1982); (3) the West Valley Redevelopment Project (adopting Ordinance No. O-10-86, dated July 15, 1986 and its amendment adopting Ordinance No. O-9-87, dated June 30, 1987); (4) the Mt. Vernon Corridor Redevelopment Project (adopting Ordinance No. O-8-87, dated June 30, 1987); and (5) the Rancho/Mill Redevelopment Project (adopting Ordinance No. O-13-94, dated July 5, 1994) (collectively and as amended, the "Project Areas"); and

**WHEREAS**, the Redevelopment Agency for the City of Colton ("Agency") has been engaged in activities to redevelop the Project Areas pursuant to the provisions of the California Community Redevelopment Law (Health and Safety Code Section 33000 et seq.); and

**WHEREAS**, continued redevelopment of the Project Areas to eliminate blight, improve public facilities and infrastructure, renovate and construct affordable housing, and enter into partnerships with private industries to create jobs and expand the local economy is vital to the health, safety and welfare of the City; and

**WHEREAS**, on June 28, 2011, the State of California enacted California Health and Safety Code Section 34161 et seq. as part of the State's enactment of Assembly Bill 1X 26 ("AB 1X 26"), immediately prohibiting further redevelopment activity by redevelopment agencies and dissolving all redevelopment agencies in the State of California on October 1, 2011; and

**WHEREAS**, on June 28, 2011, the State of California also enacted California Health and Safety Code Section 34192 et seq. under Assembly Bill 1X 27 ("AB 1X 27"), providing communities the opportunity to continue redevelopment activity through their local redevelopment agencies by electing to participate in the "Alternative Voluntary Redevelopment Program"; and

**WHEREAS**, on July 18, 2011, a Petition for Writ of Mandate was filed in the Supreme Court of the State of California in the matter of *California Redevelopment Association, et al. v. Ana Matosantos, et al.*, Case No. 5194861 ("Legal Action"), challenging the constitutionality of AB 1X 26 and AB 1X 27 on behalf of cities, counties and redevelopment agencies and requesting a stay of enforcement of AB 1X 26 and AB 1X 27 pending the Supreme Court's determination of the constitutionality of AB 1X 26 and AB 1X 27; and

**WHEREAS**, on August 11, 2011, the Supreme Court issued an order in the Legal Action granting a partial stay of California Health and Safety Code Section 34161 et seq., exclusive of California Health and Safety Code Sections 34161 through 34167 (which prohibit all new redevelopment activity), and a complete stay of California Health and Safety Code Section 34192 et seq., such that the City and the Agency cannot currently pursue new redevelopment activity under the Alternative Voluntary Redevelopment Program (collectively, “Stay”); and

**WHEREAS**, on August 17, 2011, the Supreme Court modified the Stay such that the Stay no longer affects California Health and Safety Code Sections 34167.5 through 34169.5, in addition to California Health and Safety Code Sections 34161 through 34167, or California Health and Safety Code Section 34194(b)(2); and

**WHEREAS**, if upheld by the Supreme Court, the Alternative Voluntary Redevelopment Program would allow the Agency to continue pursuing redevelopment within the City, rather than being dissolved pursuant to California Health and Safety Code Section 34161 et seq.; and

**WHEREAS**, on August 2, 2011, the City conditionally elected to participate in the Alternative Voluntary Redevelopment Program by adoption of Ordinance No. O-03-11 (“Ordinance”), stating the City’s election to participate in the program, if California Health and Safety Code Section 34161 et seq., and California Health and Safety Code Section 34192 et seq., are found to be constitutional; and

**WHEREAS**, the City intends to participate in the Alternative Voluntary Redevelopment Program under the provisions of California Health and Safety Code Section 34161 et seq., and California Health and Safety Code Section 34192 et seq., as they existed prior to imposition of the Stay, because such laws prohibit all new redevelopment activity within the City, would dissolve the Agency and threaten the future health, safety and welfare of the City; and

**WHEREAS**, the City does not intend to participate in the Alternative Voluntary Redevelopment Program, if all or any portion of California Health and Safety Code Section 34161 et seq., or California Health and Safety Code Section 34192 et seq., are determined by a court of competent jurisdiction to be unconstitutional, illegal, invalid or otherwise unenforceable or inapplicable, for any reason or in any manner that allows the Agency to continue its operations and redevelopment activities in a manner acceptable to the City Council, without the City’s participation in the Alternative Voluntary Redevelopment Program, and all appeals of such court determination are exhausted or unsuccessful, or the time for filing an appeal of such court determination has lapsed; and

**WHEREAS**, participation in the Alternative Voluntary Redevelopment Program requires the City to pay certain dollar amounts annually, based on formulas set forth in California Health and Safety Code Section 34194 (“Community Remittance”), to the County of San Bernardino Auditor-Controller; and

**WHEREAS**, for Fiscal Year 2011-2012 the State of California Director of Finance was required to notify the City by August 1, 2011, of the dollar amount of the Community

Remittance payable by the City to participate in the Alternative Voluntary Redevelopment Program for such fiscal year; and

**WHEREAS**, the State of California Director of Finance notified the City, as of August 1, 2011, that the dollar amount of the Community Remittance payable by the City to participate in the Alternative Voluntary Redevelopment Program for Fiscal Year 2011-2012 is Three Million Two Hundred Forty Thousand Nine Dollars (\$3,240,009); and

**WHEREAS**, the City has timely filed an appeal of the Community Remittance payment amount for Fiscal Year 2011-2012 with the State of California Director of Finance; and

**WHEREAS**, California Health and Safety Code Section 34194.2, which is currently not effective as a result of the Stay, provides that the City may enter into an agreement with the Agency, whereby the Agency will transfer to the City a portion of the ad valorem property tax revenues allocated and paid by the County of San Bernardino to the Agency in each fiscal year, beginning with the 2011-2012 fiscal year, pursuant to the redevelopment plans for each of the Project Areas and Health and Safety Code Section 33670 ("Tax Increment"), in an amount not to exceed the amount of the Community Remittance for such fiscal year, for the purpose of financing activities within the Project Areas related to the Agency's goals ("Agreement"); and

**WHEREAS**, the City and the Agency desire to enter into the Agreement, with the effectiveness of the Agreement conditioned on the Supreme Court ordering the Stay lifted or modified in a manner that permits the Agency and the City to enter into the Agreement and the City's Ordinance electing to participate in the Alternative Voluntary Redevelopment Program is valid and effective for such purpose, or later ratification or re-adoption of such Ordinance by the City or adoption of a new Ordinance by the City and, in each case, such action is effective to allow the City and the Agency to proceed pursuant to the Alternative Voluntary Redevelopment Program.

**NOW, THEREFORE, BE IT RESOLVED** by the Redevelopment Agency for the City of Colton, as follows:

**Section 1. Recitals.** The Recitals preceding this Resolution are true and correct and are incorporated into this Resolution.

**Section 2. CEQA.** Adoption of this Resolution is exempt from the requirements of the California Environmental Quality Act ("CEQA"), pursuant to State CEQA Guidelines (Title 14 California Code of Regulations Section 15000 et seq.) Section 15061(b)(3), because it can be seen with certainty that approval of the Agreement will not have a significant effect on the environment, and pursuant to State CEQA Guidelines Section 15378(b)(4), because approval of the Agreement is the creation of a government funding mechanism or other government fiscal activity which does not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment. The Agency Secretary is authorized and directed to file a Notice of Exemption with the appropriate official of the County of San Bernardino, California, within five (5) days following the date of adoption of this Resolution.

**Section 3. Finding.** Upon consideration of the facts set forth in the staff report accompanying this Resolution and other written and oral evidence presented to the Agency, the Agency finds that the Agency transfer of Tax Increment to the City for funding the Community Remittance payments by the City will: (1) allow the Agency to remain in existence and continue to act to accomplish the Agency's goals in the Project Areas and is in the best interests of the health, safety and welfare of the City's residents; and (2) free the City from committing general fund revenues or other City assets to pay the Community Remittance for any fiscal year.

**Section 4. Approval of Agreement.** The Agency conditionally approves the Agreement, in substantially the form attached to this Resolution as Exhibit A, to only be effective upon the Stay being lifted or modified in a manner that permits the Agency and the City to enter into the Agreement and the City's Ordinance electing to participate in the Alternative Voluntary Redevelopment Program is valid and effective for such purpose, or later ratification or re-adoption of such Ordinance by the City or adoption of a new Ordinance by the City and, in each case, such action is effective to allow the City and the Agency to proceed pursuant to the Alternative Voluntary Redevelopment Program. The Agreement provides that the Agency's obligation to transfer Tax Increment to the City and the City's obligation to pay the Community Remittance are expressly conditioned upon: (1) a final determination that California Health and Safety Code Sections 34161 et seq. and 34192 et seq. are constitutional; and (2) the City's Ordinance electing to participate in the Alternative Voluntary Redevelopment Program being valid and effective for such purpose, or later ratification or re-adoption of such Ordinance by the City or adoption of a new Ordinance by the City and, in each case, such action is effective to allow the City and the Agency to proceed pursuant to the Alternative Voluntary Redevelopment Program. The Agency authorizes and directs the Executive Director to sign and enter into the Agreement on behalf of the Agency, including making any minor clarifying, conforming and technical changes as may be approved by Agency Counsel. The Executive Director is further authorized and directed to take such actions and make or enter into such documents as may be necessary to carry out the obligations of the Agency under the Agreement.

**Section 5. Severability.** If any provision of this Resolution or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The Agency declares that the Agency would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.

**Section 6. Certification.** The Agency Secretary shall certify to the adoption of this Resolution.

**Section 7.**    **Effective Date.** This Resolution shall become effective immediately upon its adoption.

**APPROVED AND ADOPTED** this 20<sup>th</sup> day of September, 2011.

\_\_\_\_\_  
Sarah S. Zamora  
Chairperson  
Redevelopment Agency for the City of Colton

ATTEST:

\_\_\_\_\_  
Eileen Gomez, CMC  
Secretary  
Redevelopment Agency for the City of Colton

REDEVELOPMENT AGENCY FOR THE CITY OF COLTON  
SECRETARY'S CERTIFICATE

STATE OF CALIFORNIA                                 )  
COUNTY OF SAN BERNARDINO                     )ss.  
CITY OF COLTON                                     )

I, Eileen Gomez, CMC, Secretary to the Redevelopment Agency for the City of Colton, do hereby certify that the foregoing Resolution of the Redevelopment Agency for the City of Colton conditionally approving a community remittance funding agreement with the City of Colton was duly adopted by the Redevelopment Agency for the City of Colton at a regular meeting of the Redevelopment Agency for the City of Colton, held on the 20<sup>th</sup> day of September, 2011, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Dated: \_\_\_\_\_

\_\_\_\_\_  
Eileen Gomez, CMC  
Secretary  
Redevelopment Agency for the City of Colton



**EXHIBIT A**

**COMMUNITY REMITTANCE FUNDING AGREEMENT**

**[Attached behind this cover page]**

## COMMUNITY REMITTANCE FUNDING AGREEMENT

This COMMUNITY REMITTANCE FUNDING AGREEMENT (“**Agreement**”), is dated as of September 20, 2011, by and between the CITY OF COLTON, a California municipal corporation (“**City**”), and the REDEVELOPMENT AGENCY FOR THE CITY OF COLTON, a public body, corporate and politic (“**Agency**”). The City and the Agency are sometimes, individually, referred to in this Agreement as a “**Party**” or are sometimes, collectively, referred to in this Agreement as the “**Parties**.” The Parties enter into this Agreement with reference to the following recited facts:

### RECITALS

A. The City currently has five effective redevelopment projects: (1) the Cooley Ranch Redevelopment Project (adopting Ordinance No. 1478, dated July 29, 1975); (2) the Santa Ana River Redevelopment Project (adopting Ordinance No. 1632, dated December 29, 1982); (3) the West Valley Redevelopment Project (adopting Ordinance No. O-10-86, dated July 15, 1986 and its amendment adopting Ordinance No. O-9-87, dated June 30, 1987); (4) the Mt. Vernon Corridor Redevelopment Project (adopting Ordinance No. O-8-87, dated June 30, 1987); and (5) the Rancho/Mill Redevelopment Project (adopting Ordinance No. O-13-94, dated July 5, 1994) (collectively and as amended, the “**Project Areas**”); and

B. The Agency has been engaged in activities to redevelop the Project Areas pursuant to the provisions of the California Community Redevelopment Law (Health and Safety Code Sections 33000, et seq.); and

C. Continued redevelopment of the Project Areas to eliminate blight, improve public facilities and infrastructure, renovate and construct affordable housing, and enter into partnerships with private industries to create jobs and expand the local economy is vital to the health, safety and welfare of the City; and

D. On June 28, 2011, the State of California enacted California Health and Safety Code Section 34161 et seq. as part of the State’s enactment of Assembly Bill 1X 26 (“**AB 1X 26**”), immediately prohibiting further redevelopment activity by redevelopment agencies and dissolving all redevelopment agencies in the State of California on October 1, 2011; and

E. On June 28, 2011, the State of California also enacted California Health and Safety Code Section 34192 et seq. under Assembly Bill 1X 27 (“**AB 1X 27**”), providing communities the opportunity to continue redevelopment activity through their local redevelopment agencies by electing to participate in the “Alternative Voluntary Redevelopment Program”; and

F. On July 18, 2011, a Petition for Writ of Mandate was filed in the Supreme Court of the State of California in the matter of *California Redevelopment Association, et al. v. Ana Matosantos, et al.*, Case No. 5194861 (“**Legal Action**”), challenging the constitutionality of AB 1X 26 and AB 1X 27, on behalf of cities, counties and redevelopment agencies and requesting a stay of enforcement of AB 1X 26 and AB 1X 27, pending the Supreme Court’s determination of the constitutionality of AB 1X 26 and AB 1X 27; and

G. On August 11, 2011, the Supreme Court issued an order in the Legal Action granting a partial stay of California Health and Safety Code Section 34161 et seq., exclusive of California Health and Safety Code Sections 34161 through 34167 (which prohibit all new redevelopment activity), and a complete stay of California Health and Safety Code Section 34192 et seq., such that the City and the Agency cannot currently pursue new redevelopment activity under the Alternative Voluntary Redevelopment Program (collectively, “**Stay**”); and

H. On August 17, 2011, the Supreme Court modified the Stay such that the Stay no longer affects California Health and Safety Code Sections 34167.5 through 34169.5, in addition to California Health and Safety Code Sections 34161 through 34167, or California Health and Safety Code Section 34194(b)(2); and

I. If upheld by the Supreme Court, the Alternative Voluntary Redevelopment Program would allow the Agency to continue pursuing redevelopment within the City, rather than being dissolved pursuant to California Health and Safety Code Section 34161 et seq.; and

J. On August 2, 2011, the City conditionally elected to participate in the Alternative Voluntary Redevelopment Program by adoption of Ordinance No. O-03-11 (“**Ordinance**”), stating the City’s election to participate in the program, if California Health and Safety Code Section 34161 et seq., and California Health and Safety Code Section 34192 et seq., are found to be constitutional; and

K. The City intends to participate in the Alternative Voluntary Redevelopment Program under the provisions of California Health and Safety Code Section 34161 et seq., and California Health and Safety Code Section 34192 et seq., as they existed prior to imposition of the Stay, because such laws prohibit all new redevelopment activity within the City, would dissolve the Agency and threaten the future health, safety and welfare of the City; and

L. The City does not intend to participate in the Alternative Voluntary Redevelopment Program, if all or any portion of California Health and Safety Code Section 34161 et seq., or California Health and Safety Code Section 34192 et seq., are determined by a court of competent jurisdiction to be unconstitutional, illegal, invalid or otherwise unenforceable or inapplicable, for any reason or in any manner that allows the Agency to continue its operations and redevelopment activities in a manner acceptable to the City Council, without the City’s participation in the Alternative Voluntary Redevelopment Program, and all appeals of such court determination are exhausted or unsuccessful, or the time for filing an appeal of such court determination has lapsed; and

M. Participation in the Alternative Voluntary Redevelopment Program requires the City to pay certain dollar amounts annually, based on formulas set forth in California Health and Safety Code Section 34194 (“**Community Remittance**”), to the County of San Bernardino Auditor-Controller; and

N. For Fiscal Year 2011-2012 the State of California Director of Finance was required to notify the City by August 1, 2011, of the dollar amount of the Community Remittance payable by the City to participate in the Alternative Voluntary Redevelopment Program for such fiscal year; and

O. The State of California Director of Finance notified the City, as of August 1, 2011, that the dollar amount of the Community Remittance payable by the City to participate in the Alternative Voluntary Redevelopment Program for Fiscal Year 2011-2012 is Three Million Two Hundred Forty Thousand Nine Dollars (\$3,240,009); and

P. The City has timely filed an appeal of the Community Remittance payment amount for Fiscal Year 2011-2012 with the State of California Director of Finance; and

Q. California Health and Safety Code Section 34194.2, which is currently not effective as a result of the Stay, provides that the City may enter into an agreement with the Agency, whereby the Agency will transfer to the City a portion of the ad valorem property tax revenues allocated and paid by the County of San Bernardino (“**County**”) to the Agency in each fiscal year, beginning with the 2011-2012 fiscal year, pursuant to the redevelopment plans for each of the Project Areas and Health and Safety Code Section 33670 (“**Tax Increment**”), in an amount not to exceed the amount of the Community Remittance for such fiscal year, for the purpose of financing activities within the Project Areas related to the Agency’s goals; and

R. The City and the Agency desire to enter into this Agreement, with the effectiveness of this Agreement conditioned on the Supreme Court ordering the Stay lifted or modified in a manner that permits the Agency and the City to enter into this Agreement; and

S. The City reserves the right, whether or not any Community Remittance has been paid, to challenge the legality of California Health and Safety Code Section 34161 et seq., and/or California Health and Safety Code Section 34192 et seq.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the promises of the City and the Agency contained in this Agreement and other good and valuable consideration, the City and the Agency agree as follows:

1. Conditions to Effectiveness of Agreement. This Agreement shall only become effective if and when the Supreme Court orders the Stay lifted or modified in a manner that permits the Agency and the City to enter into this Agreement and the City’s ordinance electing to participate in the Alternative Voluntary Redevelopment Program is valid and effective for such purpose or later ratification or re-adoption of such ordinance by the City or adoption of a new ordinance by the City and, in each case, such action is effective to allow the City and the Agency to proceed pursuant to the Alternative Voluntary Redevelopment Program.

2. Agency Payments to City to Fund Community Remittance Each Fiscal Year. The Agency's obligation to make payments to the City pursuant to this Agreement is expressly conditioned upon ("**Condition**"): (1) a final determination by the California Supreme Court that California Health and Safety Code Section 34161 et seq., and California Health and Safety Code Section 34192 et seq., are constitutional; and (2) the City's ordinance electing to participate in the Alternative Voluntary Redevelopment Program is valid and effective for such purpose or the City's later ratification or re-adoption of such ordinance or City adoption of a new ordinance and, in each case, such City action is effective to allow the City and the Agency to proceed pursuant to the Alternative Voluntary Redevelopment Program. Subject to the prior occurrence of the Condition, on or before each January 10 and May 10 of each fiscal year while this Agreement is in effect, the Agency shall pay to the City an amount of Tax Increment or other Agency funds equal to one-half of the amount of the Community Remittance for such fiscal year; provided, however, that for the 2011-2012 fiscal year the Agency shall pay to the City an amount of Tax Increment or other Agency funds equal to the amount of the Community Remittance for such fiscal year in a time and manner that will allow the City to pay the Community Remittance to the County for the 2011-2012 fiscal year, within the time required by law. The amount of the Community Remittance for each fiscal year shall be determined pursuant to California Health and Safety Code Section 34194. The City and the Agency agree that, if the Agency does not have sufficient Tax Increment available to pay the full Community Remittance in any fiscal year, the City shall have no obligation to use City funds for such purpose, in which case the Agency may be dissolved pursuant to California Health and Safety Code Section 34195.

3. City Payment of Community Remittance Each Fiscal Year. The City's obligation to make payments of Community Remittances pursuant to this Section 3 is expressly conditioned upon the prior occurrence of the Condition. Subject to the prior occurrence of the Condition and receipt of Tax Increment or other funds from the Agency in an amount equal to the amount of the Community Remittance pursuant to Section 2, the City shall pay to the County of San Bernardino Auditor-Controller, no later than January 15 and May 15 of each year, one-half of the amount of the Community Remittance due for such fiscal year while this Agreement is in effect; provided, however, that for the 2011-2012 fiscal year the City shall pay the Community Remittance for the 2011-2012 fiscal year, within the time required by law. The City's obligation to pay such Community Remittances shall be a special limited fund obligation of the City payable solely from Tax Increment or other funds paid to the City by the Agency pursuant to this Agreement for the purpose of paying the Community Remittance in a particular fiscal year. Nothing contained in this Agreement is intended to nor shall be deemed to be a pledge of the City's general fund revenues or other City assets to payment of the Community Remittance for any fiscal year.

4. Termination. This Agreement may be terminated by either the City or the Agency, if all or any portion of California Health and Safety Code Section 34161 et seq., or California Health and Safety Code Section 34192 et seq., are determined by a court of competent jurisdiction to be unconstitutional, illegal, invalid or otherwise unenforceable or inapplicable, for any reason or in any manner. Notwithstanding the foregoing or any other provision of this Agreement, either the City or the Agency may terminate this Agreement at any time, for any reason or no reason.

5. Remedies.

5.1 **Remedies.** City and Agency shall have all remedies available to either of them at law or in equity under the laws of the State of California regarding any Event of Default by the other under this Agreement, subject to Section 5.3.

5.2 **Rights and Remedies are Cumulative.** Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties set forth in this Agreement are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by such Party, at the same or different times, of any other rights or remedies for the same Default or Event of Default or the same rights or remedies for any other Default or Event of Default.

5.3 **No Consequential Damages.** Whenever either Party may seek or claim damages against the other Party, neither Party shall seek, nor shall there be awarded or granted by any court, arbitrator, or other adjudicator, any speculative, consequential, collateral, special, punitive, or indirect damages, whether such breach shall be willful, knowing, intentional, deliberate, or otherwise. The Parties intend that any damages awarded to either Party shall be limited to actual, direct damages sustained by the aggrieved Party. Neither Party shall be liable for any loss of profits suffered or claimed to have been suffered by the other Party.

5.4 **Definitions.** For purposes of this Agreement, the following terms are defined as follows:

(a) *Default.* Any Monetary Default or Non-Monetary Default.

(b) *Event of Default.* The occurrence of any one or more of the following:

(i) Monetary Default. A Monetary Default that continues for thirty (30) days after Notice from the non-defaulting Party, specifying in reasonable detail the amount of money not paid and the nature and calculation of each such payment; or

(ii) Non-Monetary Default. Any Non-Monetary Default that is not cured within thirty (30) days after Notice to the Party alleged to be in Default describing the Non-Monetary Default in reasonable detail, or, in the case of a Non-Monetary Default that cannot with reasonable diligence be cured within thirty (30) days after such Notice, if the Party alleged to be in Default does not do all of the following: (i) within thirty (30) days after Notice of such Non-Monetary Default, advise the other Party of the intention of the Party alleged to be in Default to take all reasonable steps to cure such Non-Monetary Default; and (ii) duly commence such cure, within such period, and then prosecute such cure to completion within a reasonable time under the circumstances.

(c) *Monetary Default.* Any failure by either Party to pay or deposit, when and as this Agreement requires, any amount of money whether to or with a Party or a third person.

(d) *Non-Monetary Default.* The occurrence of any of the following, except to the extent constituting a Monetary Default: (a) any failure of a Party to perform any of its obligations under this Agreement; (b) a Party's failure to comply with any material restriction or



prohibition in this Agreement; or (c) any other event or circumstance that, with passage of time or giving of Notice, or both, or neither, would constitute a breach of this Agreement.

6. General Provisions.

6.1 **Incorporation of Recitals.** The Recitals of fact set forth preceding this Agreement are true and correct and are incorporated into this Agreement in their entirety by this reference.

6.2 **Notices, Demands and Communications Between the Parties.** Any and all notices submitted by either Party to the other Party pursuant to or as required by this Agreement shall be proper, if in writing and transmitted to the address of the City or the Agency, as applicable, set forth below in this Section 6.2, by one or more of the following methods: (1) messenger for immediate personal delivery; (2) a nationally recognized overnight (one business day) delivery service (i.e., Federal Express, United Parcel Service, etc.); or (3) registered or certified United States mail, postage prepaid, return receipt requested. Such notices may be sent in the same manner to such other addresses as either Party may designate, from time to time, by notice. Any notice shall be deemed to be received by the addressee, regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt, on the day that the notice is delivered by personal delivery, on the date of delivery by a nationally recognized overnight courier service (or when delivery has been attempted twice, as evidenced by the written report of the courier service) or four (4) calendar days after the notice is deposited with the United States Postal Service for delivery, as provided in this Section 6.2. Rejection, other refusal to accept or the inability to deliver a notice because of a changed address of which no notice was given or other action by a person to whom notice is sent, shall be deemed receipt of the notice. The following are the authorized addresses for the submission of notices to the Parties, as of the date of this Agreement:

To City: City of Colton  
650 N. La Cadena Drive  
Colton, CA 92324  
Attn: City Manager

To Agency: Redevelopment Agency for the  
City of Colton  
650 N. La Cadena Drive  
Colton, CA 92324  
Attn: Executive Director

6.3 **Relationship of Parties.** The Parties each intend and agree that the City and the Agency are independent contracting entities and do not intend by this Agreement to create any partnership, joint venture, or similar business arrangement, relationship or association between them.

6.4 **Survival of Agreement.** All of the provisions of this Agreement shall be applicable to any dispute between the Parties arising from this Agreement, whether prior to or following expiration or termination of this Agreement, until any such dispute is finally and

completely resolved between the Parties, either by final written settlement, entry of a non-appealable judgment or expiration of all applicable statutory limitations periods and all terms and conditions of this Agreement relating to dispute resolution and limitations on damages or remedies shall survive any expiration or termination of this Agreement.

**6.5 Calculation of Time Periods.** Unless otherwise specified, all references to time periods in this Agreement measured in days shall be to consecutive calendar days, all references to time periods in this Agreement measured in months shall be to consecutive calendar months and all references to time periods in this Agreement measured in years shall be to consecutive calendar years.

**6.6 Principles of Interpretation.** No inference in favor of or against any Party shall be drawn from the fact that such Party has drafted any part of this Agreement. The Parties have both participated substantially in the negotiation, drafting, and revision of this Agreement, with advice from legal and other counsel and advisers of their own selection. A word, term or phrase defined in the singular in this Agreement may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which shall govern all language in this Agreement. The words "include" and "including" in this Agreement shall be construed to be followed by the words: "without limitation." Each collective noun in this Agreement shall be interpreted as if followed by the words "(or any part of it)," except where the context clearly requires otherwise. Every reference to any document, including this Agreement, refers to such document, as modified from time to time (excepting any modification that violates this Agreement), and includes all exhibits, schedules, addenda and riders to such document. The word "or" in this Agreement includes the word "and." Every reference to a law, statute, regulation, order, form or similar governmental requirement refers to each such requirement as amended, modified, renumbered, superseded or succeeded, from time to time.

**6.7 Governing Law.** The substantive and procedural laws of the State of California shall govern the interpretation and enforcement of this Agreement, without application of conflicts or choice of laws principles.

**6.8 Binding on Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective legal representatives, successors and assigns.

**6.9 No Other Representations or Warranties.** Except as expressly set forth in this Agreement, no Party makes any representation or warranty material to this Agreement to any other Party.

**6.10 No Third-Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the Parties and their respective permitted successors and assigns, nor is anything in this Agreement intended to relieve or discharge any obligation of any third person to any Party or give any third person any right of subrogation or action over or against any Party.

6.11 **Signature in Counterparts.** This Agreement may be signed by the authorized representatives of the Parties in multiple counterpart originals, each of which shall be deemed to be an original, but all of which together shall constitute one and the same document.

6.12 **Entire Agreement.** This Agreement includes nine (9) pages that constitute the entire understanding and Agreement of the Parties regarding the subjects addressed in this Agreement. This Agreement integrates all of the terms and conditions mentioned in this Agreement or incidental to this Agreement, and supersedes all negotiations or previous agreements between the Parties with respect to the subjects addressed in this Agreement.

6.13 **Time Declared to be of the Essence.** As to the performance of any obligation under this Agreement of which time is a component, the performance of such obligation within the time specified is of the essence.

6.14 **No Implied or Continuing Waiver.** Failure to insist on any one occasion upon strict compliance with any term, covenant, condition, restriction or agreement contained in this Agreement shall not be deemed a waiver of such term, covenant, condition, restriction or agreement, nor shall any waiver or relinquishment of any rights or powers under this Agreement, at any one time or more times, be deemed a waiver or relinquishment of such right or power at any other time or times. All waivers of the provisions of this Agreement and all amendments to this Agreement must be in writing and signed by the authorized representative(s) of both the City and the Agency.

**[Signatures on the following page]**

**SIGNATURE PAGE  
TO  
COMMUNITY REMITTANCE FUNDING AGREEMENT**

**CITY OF COLTON,**  
a California municipal corporation

**REDEVELOPMENT AGENCY FOR THE  
CITY OF COLTON**  
a public body, corporate and politic

By: \_\_\_\_\_  
Rod Foster  
City Manager

By: \_\_\_\_\_  
Rod Foster  
Executive Director

ATTEST:

ATTEST:

By: \_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Agency Secretary

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Best Best & Krieger, LLP

Best Best & Krieger, LLP

By: \_\_\_\_\_  
City Attorney

By: \_\_\_\_\_  
Agency Counsel

## RESOLUTION NO. 896

### **A RESOLUTION OF THE REDEVELOPMENT AGENCY FOR THE CITY OF COLTON CONDITIONALLY REDUCING THE FISCAL YEAR 2011-2012 ALLOCATION TO THE LOW AND MODERATE INCOME HOUSING FUND AND MAKING RELATED FINDINGS**

**WHEREAS**, the City Council of the City of Colton (“City”) currently has five effective redevelopment projects: (1) the Cooley Ranch Redevelopment Project (adopting Ordinance No. 1478, dated July 29, 1975); (2) the Santa Ana River Redevelopment Project (adopting Ordinance No. 1632, dated December 29, 1982); (3) the West Valley Redevelopment Project (adopting Ordinance No. O-10-86, dated July 15, 1986 and its amendment adopting Ordinance No. O-9-87, dated June 30, 1987); (4) the Mt. Vernon Corridor Redevelopment Project (adopting Ordinance No. O-8-87, dated June 30, 1987); and (5) the Rancho/Mill Redevelopment Project (adopting Ordinance No. O-13-94, dated July 5, 1994) (collectively and as amended, the “**Project Areas**”); and

**WHEREAS**, the Redevelopment Agency for the City of Colton (“**Agency**”) has been engaged in activities to redevelop the Project Areas pursuant to the provisions of the California Community Redevelopment Law (Health and Safety Code Section 33000 et seq.); and

**WHEREAS**, continued redevelopment of the Project Areas to eliminate blight, improve public facilities and infrastructure, renovate and construct affordable housing, and enter into partnerships with private industries to create jobs and expand the local economy is vital to the health, safety and welfare of the City; and

**WHEREAS**, California Health and Safety Code Sections 33334.2 and 33334.3 require the Agency to deposit twenty percent (20%) of property tax increment revenue allocated to the Agency pursuant to California Health and Safety Code Section 33670 (“**Tax Increment**”) in a Low and Moderate Income Housing Fund (“**Housing Fund**”) for the purpose of increasing, improving, and preserving the community’s supply of low and moderate income housing; and

**WHEREAS**, on June 28, 2011, the State of California enacted California Health and Safety Code Section 34161 et seq. as part of the State’s enactment of Assembly Bill 1X 26 (“**AB 1X 26**”), immediately prohibiting further redevelopment activity by redevelopment agencies and dissolving all redevelopment agencies in the State of California on October 1, 2011; and

**WHEREAS**, on June 28, 2011, the State of California also enacted California Health and Safety Code Section 34192 et seq. under Assembly Bill 1X 27 (“**AB 1X 27**”), providing communities the opportunity to continue redevelopment activity through their local redevelopment agencies by electing to participate in the “Alternative Voluntary Redevelopment Program”; and

**WHEREAS**, on July 18, 2011, a Petition for Writ of Mandate was filed in the Supreme Court of the State of California in the matter of *California Redevelopment Association, et al. v. Ana*

*Matosantos, et al.*, Case No. 5194861 (“**Legal Action**”), challenging the constitutionality of California Health and Safety Code Section 34161 et seq., and California Health and Safety Code Section 34192 et seq., on behalf of cities, counties and redevelopment agencies and requesting a stay of enforcement of California Health and Safety Code Section 34161 et seq., and California Health and Safety Code Section 34192 et seq., pending the Supreme Court’s determination of the constitutionality of AB 1X 26 and AB 1X 27; and

**WHEREAS**, on August 11, 2011, the Supreme Court issued an order in the Legal Action granting a partial stay of California Health and Safety Code Section 34161, et seq., exclusive of California Health and Safety Code Sections 34161 through 34167 (which suspend all new redevelopment activity), and a complete stay of California Health and Safety Code Section 34192, et seq., such that the City and the Agency cannot currently pursue new redevelopment activity under the Alternative Voluntary Redevelopment Program (collectively, “**Stay**”); and

**WHEREAS**, on August 17, 2011, the Supreme Court modified the Stay such that the Stay no longer affects California Health and Safety Code Sections 34167.5 through 34169.5, in addition to California Health and Safety Code Sections 34161 through 34167, or California Health and Safety Code Section 34194(b)(2); and

**WHEREAS**, if upheld by the Supreme Court, the Alternative Voluntary Redevelopment Program would allow the Agency to continue pursuing redevelopment within the City, rather than being dissolved pursuant to California Health and Safety Code Section 34161 et seq.; and

**WHEREAS**, on August 2, 2011, the City conditionally elected to participate in the Alternative Voluntary Redevelopment Program by adoption of Ordinance No. O-03-11 (“**Ordinance**”), stating the City’s election to participate in the program, if California Health and Safety Code Section 34161 et seq., and California Health and Safety Code Section 34192 et seq., are found to be constitutional; and

**WHEREAS**, the City intends to participate in the Alternative Voluntary Redevelopment Program under the provisions of California Health and Safety Code Section 34161 et seq., and California Health and Safety Code Section 34192 et seq., as they existed prior to imposition of the Stay, because such laws suspended all redevelopment activity within the City, would dissolve the Agency and threaten the future health, safety and welfare of the City; and

**WHEREAS**, the City does not intend to participate in the Alternative Voluntary Redevelopment Program, if all or any portion of California Health and Safety Code Section 34161 et seq., or California Health and Safety Code Section 34192 et seq., are determined by a court of competent jurisdiction to be unconstitutional, illegal, invalid or otherwise unenforceable or inapplicable, for any reason or in any manner that allows the Agency to continue its operations and redevelopment activities in a manner acceptable to the City Council, without the City’s participation in the Alternative Voluntary Redevelopment Program, and all appeals of such court determination are exhausted or unsuccessful, or the time for filing an appeal of such court determination has lapsed; and

**WHEREAS**, participation in the Alternative Voluntary Redevelopment Program requires the City to pay certain dollar amounts annually, based on formulas set forth in California Health and Safety Code Section 34194 (“**Community Remittance**”), to the County of San Bernardino Auditor-Controller; and

**WHEREAS**, for Fiscal Year 2011-2012 the State of California Director of Finance was required to notify the City by August 1, 2011, of the dollar amount of the Community Remittance payable by the City to participate in the Alternative Voluntary Redevelopment Program for such fiscal year; and

**WHEREAS**, the State of California Director of Finance notified the City, as of August 1, 2011, that the dollar amount of the Community Remittance payable by the City to participate in the Alternative Voluntary Redevelopment Program for Fiscal Year 2011-2012 is Three Million Two Hundred Forty Thousand Nine Dollars (\$3,240,009); and

**WHEREAS**, the City has timely filed an appeal of the Community Remittance payment amount for Fiscal Year 2011-2012 with the State of California Director of Finance; and

**WHEREAS**, California Health and Safety Code Section 34194.2, which is currently not effective as a result of the Stay, provides that the City may enter into an agreement with the Agency, whereby the Agency will transfer to the City a portion of the ad valorem property tax revenues allocated and actually paid by the County of San Bernardino to the Agency in each fiscal year, beginning with the 2011-2012 fiscal year, pursuant to the redevelopment plans for each of the Project Areas and Health and Safety Code Section 33670(b) (“**Tax Increment**”), in an amount not to exceed the amount of the Community Remittance for such fiscal year, for the purpose of financing activities within the Project Areas related to the Agency’s goals; and

**WHEREAS**, the Agency and the City conditionally entered into that certain Community Remittance Funding Agreement, dated as of September 20, 2011 (“**Funding Agreement**”), in accordance with California Health and Safety Code Section 34194.2, whereby the Agency agreed to transfer a portion of its annual Tax Increment each fiscal year to the City in an amount not to exceed the amount of the City’s Community Remittance payable for such fiscal year, if and when the Supreme Court orders the Stay lifted or modified in a manner that permits the Agency to enter into the Funding Agreement and the City’s ordinance electing to participate in the Alternative Voluntary Redevelopment Program is valid and effective for such purpose or later ratification or re-adoption of such ordinance by the City or adoption of a new ordinance by the City, in each case, where such action is effective to allow the City and the Agency to proceed pursuant to the Alternative Voluntary Redevelopment Program; and

**WHEREAS**, for Fiscal Year 2011-2012, California Health and Safety Code Section 34194.3, which is currently not effective as a result of the Stay, provides that the Agency shall be exempt from making the full allocation required to be made to the Agency’s Housing Fund, if the Agency finds that there are insufficient other moneys to meet the Agency’s debt and other obligations, current priority program needs, or the Agency’s obligations under the Funding Agreement; and

**WHEREAS**, because Health and Safety Code Section 34914.3 is not currently effective because of the Stay, the Agency desires to make the findings required in Health and Safety Code Section 34194.3 and reduce its allocation of Tax Increment to the Housing Fund for Fiscal Year 2011-12 on the following conditions: (1) the Supreme Court orders the Stay lifted or modified in a manner that permits the Agency to enter into the Funding Agreement; (2) a final determination by the California Supreme Court that California Health and Safety Code Section 34161 et seq., and California Health and Safety Code Section 34192 et seq., are constitutional; and (3) the City's ordinance electing to participate in the Alternative Voluntary Redevelopment Program is valid and effective for such purpose or the City's later ratification or re-adoption of such ordinance or City adoption of a new ordinance, in each case, where such City action is effective to allow the City and the Agency to proceed pursuant to the Alternative Voluntary Redevelopment Program;

**NOW, THEREFORE, BE IT RESOLVED** by the Redevelopment Agency for the City of Colton, as follows:

**Section 1. Recitals.** The facts set forth in the recitals preceding this Resolution are true and correct and are incorporated into this Resolution by this reference.

**Section 2. CEQA.** Adoption of this Resolution is exempt from the requirements of the California Environmental Quality Act ("CEQA"), pursuant to State CEQA Guidelines (Title 14 California Code of Regulations Section 15000 et seq.) Section 15061(b)(3), because it can be seen with certainty that reducing the allocation of Tax Increment to the Agency's Housing Fund for the 2011-2012 Fiscal Year will not have a significant effect on the environment, and pursuant to State CEQA Guidelines 15378(b)(4) because reducing the allocation of Tax Increment to the Agency's Housing Fund for the 2011-2012 Fiscal Year is the creation of government funding mechanisms or other government fiscal activities, which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment. The City Clerk is authorized and directed to file a Notice of Exemption with the appropriate official of the County of San Bernardino, California, within five (5) days following the date of adoption of this Ordinance.

**Section 3. Insufficient Other Funds Finding.** Upon consideration of the facts set forth in the staff report accompanying this Resolution and other written and oral evidence presented to the Agency, the Agency finds that there are insufficient other moneys to meet the Agency's debt and other obligations, current priority program needs, or the Agency's obligations under the Funding Agreement, unless the Agency is able to use the Tax Increment that would otherwise be allocated to the Agency's Housing Fund in the 2011-2012 Fiscal Year to make payments to the City pursuant to the Funding Agreement. The amount of the reduction in the Agency's allocation of Tax Increment to the Housing Fund in the 2011-2012 Fiscal Year ("**Housing Allocation Reduction**") shall be determined by the Executive Director following: (1) resolution of the Agency's appeal of the Community Remittance amount for the 2011-2012 Fiscal Year; (2) the Supreme Court orders the Stay lifted or modified in a manner that permits the Agency to enter into the Funding Agreement; (3) a final determination by the California Supreme Court that California Health and Safety Code Section 34161 et seq., and California Health and Safety Code Section 34192 et seq., are constitutional; and (4) determination that the City's ordinance electing to participate in the



Alternative Voluntary Redevelopment Program is valid and effective for such purpose or the City's later ratification or re-adoption of such ordinance or City adoption of a new ordinance, in each case, where such City action is effective to allow the City and the Agency to proceed pursuant to the Alternative Voluntary Redevelopment Program.

**Section 4. Authorization to Executive Director.** The Agency hereby authorizes the Agency Executive Director, or his or her designee, to take such actions as are necessary and appropriate to implement the Housing Allocation Reduction for Fiscal Year 2011-12.

**Section 5. Conditional Effectiveness.** This Resolution shall become effective only upon the occurrence of the following conditions: (1) the Supreme Court orders the Stay lifted or modified in a manner that permits the Agency to enter into the Funding Agreement; (2) a final determination by the California Supreme Court that California Health and Safety Code Section 34161 et seq., and California Health and Safety Code Section 34192 et seq., are constitutional; and (3) the City's ordinance electing to participate in the Alternative Voluntary Redevelopment Program is valid and effective for such purpose, or the City's later ratification or re-adoption of such ordinance or City adoption of a new ordinance by the City and, in each case, such City action is effective to allow the City and the Agency to proceed pursuant to the Alternative Voluntary Redevelopment Program.

**Section 6. Severability.** If any provision of this Resolution or the application of such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution which can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The Agency declares that the Agency would have adopted this Resolution irrespective of the invalidity of any particular provision of this Resolution.

**Section 7. Certification.** The Agency Secretary shall certify to the adoption of this Resolution.

**APPROVED AND ADOPTED** this 20<sup>th</sup> day of September, 2011.

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Sarah S. Zamora  
Chairperson  
Redevelopment Agency for the City of Colton

ATTEST:

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Eileen Gomez, CMC  
Secretary  
Redevelopment Agency for the City of Colton

STATE OF CALIFORNIA )  
COUNTY OF SAN BERNARDINO )ss.  
CITY OF COLTON )

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